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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 322

STATE OF UTAH,

Petitioner,

vs.

MONTGOMERY WARD AND COMPANY, A CORPORATION,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH AND BRIEF IN SUPPORT THEREOF.

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SUPREME COURT OF THE UNITED STATES

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STATE OF UTAH,

Petitioner,

vs.

MONTGOMERY WARD AND COMPANY, A CORPORATION,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and Associate Justices of The Supreme Court of the United States:

The Petition of the State of Utah respectfully shows:

Summary and Short Statement of Matter Involved

The Supreme Court of Utah, on June 19, 1951, in affirming a judgment of dismissal of a criminal complaint by the District Court of Salt Lake County, State of Utah (R. 17), declared two sections of a Utah statute, Sections 49-14-1 and 49-14-3, Utah Code Annotated 1943, dealing with assignments or check-offs, insofar as they are applicable to employers and employees in an "industry affecting commerce," invalid on the sole ground that they are in conflict

with and repugnant to Section 302 of the Labor Management Relations Act of 1947, hereinafter referred to as the Taft-Hartley Act, 61 Stat. 136, c. 120; 29 U. S. C. A. Sec. 141, et seq.; 9 F.C.A., Title 29, Secs. 141 et seq. In the majority opinion the question was stated in the following language:

> The question which divides the parties, and which is the sole question for our determination, is whether the above-mentioned Utah statute is repugnant to section 302 of the L. M. R. A. (R. 20).

The case arose because the respondent refused to honor a written assignment (R. 14) made by Walter Knorr, one of its employees, assigning a portion of his wages to his labor union. The willful failure of an employer to honor such an assignment is made a misdemeanor by the Utah statute. A criminal complaint (R. 1) was filed against the respondent charging it with a violation of the Utah statute. At the preliminary hearing it was stipulated that the respondent was an "employer" and that Walter Knorr, respondent's employee who had made the written assignment, was an "employee," in an "industry affecting commerce," as that term is used in the Taft-Hartley Act, and that both respondent and Walter Knorr were subject to the provisions of that act (R. 14).

Respondent was bound over by a committing magistrate to the District Court of Salt Lake County, whereupon an information was filed in that court charging respondent with violating the above referred to provisions of the Utah statute. At the arraignment respondent moved to quash the information contending, among other things, that the State statute was repugnant to the Taft-Hartley Act (R. 16). After taking the matter under advisement, the District Court granted the motion to quash and subsequently a judgment of dismissal was duly entered (R. 17).

On appeal to the Supreme Court of Utah, three Justices, over the dissent of two Justices, affirmed the judgment of dismissal of the District Court on the sole ground that the Federal Government by enacting the Taft-Hartley Act had pre-empted the whole field of legislation in regard to wage assignments or check-offs so that the Utah statute dealing with this same subject must yield and be held not applicable to employers or employees in an "industry affecting commerce," as that term is used in the Federal act.

Petitioner contends that the Supreme Court of Utah erred in holding that the Utah statute dealing with wage assignments or check-offs conflicts with and is repugnant to the Federal act. It is respectfully submitted that Congress has not pre-empted the whole field of legislation on that subject of labor management relations and therefore has not automatically invalidated the Utah statute.

Jurisdictional Statement

(a) Jurisdiction to grant this petition is sustained by 62 Stat. 929, c. 646; Title 28 U. S. C., Section 1257, subparagraph 3; Title 28 U. S. C. A., Section 1257, subparagraph 3.

(b) Statutes of the United States applied by the Supreme Court of Utah are 61 Stat. 136, c. 120; 29 U. S. C. A. Sec. 141, et seq.; 9 F. C. A., Title 29, Secs. 141 et seq. Utah Statutes invalidated by the Utah Supreme Court: 49-14-1 and 49-14-3, Utah Code Annotated 1943.

(c) Judgment of the Supreme Court was rendered on June 19, 1951. It is set forth at R. 46). (Not yet reported.) The Supreme Court of Utah remitted the record to the District Court of Salt Lake County on July 18, 1951 (R. 19). This petition for certiorari was filed September 13, 1951.

Questions Presented

The only question presented for determination is whether the Supreme Court of Utah properly construed a statute of

the United States, commonly known as the Taft-Hartley Act, as completely covering the field of legislation dealing with wage assignments or check-offs insofar as they affect employers or employees in an "industry affecting commerce", thus pre-empting the field and nullifying any state statutes on the same subject. In this case the Supreme Court of Utah invalidated a Utah statute on the sole ground of its purported repugnancy to the aforesaid statute of the United States.

Reasons Relied On for Allowance of Writ

Insofar as we have been able to determine, the judgment of the Supreme Court of Utah is the only judicial decision, state or federal, which interprets the scope and import of Section 302 of the Taft-Hartley Act on the subject of wage assignments or check-offs in an "industry affecting commerce". By a divided opinion the Supreme Court of Utah has given its interpretation of a Federal question of importance and substance in a way petitioner respectfully submits is not in harmony with the intent of Congress. Three Justices of the Supreme Court of Utah have held that Congress has pre-empted the field on the subject of wage assignments or check-off legislation, whereas two Justices of the Supreme Court of Utah have held that this field of labor-management legislation is still open to the respective states in a portion of the field not covered by the Federal act.

It is essential that a Writ be granted in order to determine the important question concerning the construction, interpretation and application of Section 302 of the Taft-Hartley Act and specifically to determine whether the Supreme Court of Utah has properly interpreted the provisions of a statute of the United States so as to preclude

future state legislation and nullify any existing state legislation on the subject of wage assignments or check-offs for employers and employees in an "industry affecting commerce."

Prayer

WHEREFORE, your petitioner prays that a Writ of Certiorari be issued out of and under the seal of this Court directed to the Supreme Court of the State of Utah, commanding said court to certify and send to this Court a transcript of the record in the case entitled *State of Utah* v. *Montgomery Ward and Company, a corporation,* (Criminal No. 13417) including also the proceedings and judgment of the Supreme Court of Utah in the appeal of said case to the Supreme Court of Utah (Criminal No. 7492) to the end that said cause may be reviewed and determined by this Court and the judgment of the Supreme Court of Utah reversed.

STATE OF UTAH,

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinion of Courts Below

The judgment of the District Court of Salt Lake County was duly made and entered on March 11, 1950 (R. 19). The opinion of the Supreme Court of Utah is set forth at R. 19 to 24. (Not reported yet.)

Grounds on Which Jurisdiction of Supreme Court of the United States Is Invoked

The judgment of the Supreme Court of Utah affirming the judgment of the District Court of Salt Lake County was rendered on June 19, 1951 (R. 46). The Supreme Court of Utah remitted the record to the District Court of Salt Lake County on July 21, 1951 (R. 19). The judgment of the Supreme Court of Utah is based upon its interpretation and application of United States statute commonly called the Labor Management Relations Act of 1947 (Taft-Hartley Act) 61 Stat. 136, c. 120; 29 U. S. C. A. Secs. 141, et seq.; 9 F. C. A., Title 29, Secs. 141 et seq.

The jurisdiction of the Supreme Court of the United States is invoked under Title 28 U. S. C., Section 1257, subparagraph 3.

Statement of the Case

This case arose because respondent refused to honor a written assignment (R. 14) made by Walter Knorr, one of its employees assigning a portion of his wages to his labor union. A criminal complaint (R. 1) was thereafter filed against respondent charging it with violating the provisions of Sections 49-14-1 and 49-14-3, Utah Code Annotated 1943, which respectively provide as follows:

49-14-1

Whenever an employee of any person, firm, school district, private or municipal corporation within the state of Utah executes and delivers to his employer an instrument in writing whereby such employee is directed to deduct a sum at the rate not exceeding [illegible] per cent per month, from his wages and to pay the same to a labor organization or union or any other organization of employees as assignee, it shall be the duty of such employer to make such deduction and to pay the same monthly or as designated by employee to such assignee and to continue to do so until otherwise directed by the employee through an instrument in writing.

49-14-3

Any employer, dealer or processor who wilfully fails to comply with the duty here imposed shall be guilty of a misdemeanor.

At the preliminary hearing on the criminal complaint it was stipulated that the respondent was an "employer" and that Walter Knorr, respondent's employee who had made the written assignment, an "employee" in an "industry affecting commerce" (R. 14), as that term is used in the Labor Management Relations Act of 1947, hereinafter referred to as the Taft-Hartley Act, and that both respondent and Walter Knorr were subject to the provisions of that act. After being bound over to the District Court of Salt Lake County by the committing magistrate conducting the preliminary hearing on the criminal complaint, an information was filed in that court charging the respondent with a wilful violation of the above quoted sections of the Utah statute. At the arraignment respondent moved to quash the information, among other reasons, on the ground that the Utah statute was in conflict with and repugnant to the provisions of the Taft-Hartley Act. After taking the mat-

ter under advisement the District Court granted respondent's motion to quash and subsequently entered a judgment of dismissal (R. 17).

On appeal to the Supreme Court of Utah the judgment of dismissal of the District Court was affirmed on the sole ground that the Utah statute conflicted with and was repugnant to the Taft-Hartley Act. Three Justices, over the dissent of two Justices, held that the Federal Government by enacting the Taft-Hartley Act completely covered the field of legislation in regard to wage assignments or checkoffs and thus pre-empted the field. The provision of the Taft-Hartley Act which is claimed to have pre-empted the field is Section 302, which in part provides as follows:

> Sec. 302(a) It shall be unlawful for an employer to pay or deliver, or agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
>
> (b) It shall be unlawful for a representative of any employees who are engaged in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer or such employees any money or other thing of value.
>
> (c) *The provisions of this section shall not be applicable* (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason, of his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) *with respect to money deducted from the*

wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or

(5) * * *

(d) Any person who wilfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) * * * (Emphasis added.)

The majority of the Supreme Court of Utah held that the Utah statute is repugnant to the Taft-Hartley Act, must yield to the latter and be held not applicable to employers and employees in an "industry affecting commerce", as defined in the Taft-Hartley Act.

Specification of Errors

1. The Supreme Court of Utah erred in holding that the Taft-Hartley Act pre-empted the field of legislation in regard to wage assignments or check-offs thus invalidating the Utah statute on the same subject.

ARGUMENT

The Supreme Court of Utah erred in holding that the Taft-Hartley Act pre-empted the field of legislation with reference to wage assignments or check-offs thus invalidating the Utah statute on the same subject.

At the outset petitioner wishes to make it clear that it concedes the supremacy of Federal over State legislative power in fields where their respective powers conflict. The field of labor-management relations however is so inter-

woven with matters of both national and local concern that Congress and this Court in numerous instances have recognized that the two sovereigns may legislate on that subject without being in conflict with each other. Identity of subject matter alone does not automatically invalidate State legislation. So long as both acts may move freely in the orbit of their respective purposes both may stand. The test as derived from the decisions of this Court appears to be: Can the State Statute as properly construed be reconciled with the Statute of the United States so as to permit both to stand?

A comparison of the provisions of the Federal and Utah acts we think will demonstrate that they are not in conflict so far as assignements for membership dues are concerned. Paragraph (a) of Section 302 of the Taft-Hartley act states a general prohibiiton against the payment by an employer engaged in an "industry affecting commerce" of any money or other thing of value to any representative of any of his employees. In paragraph (c), however, it is expressly stated that the provisions of the section shall not be applicable in certain specific situations, one of which is as follows:

> * * * (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; * * *

We particularly direct attention to the fact that the general prohibition of Section 302 is made not applicable to the deduction of money from wages in payment of membership dues provided a written assignment has been executed "which shall not be irrevocable for a period of more than"

certain stated periods. This statute neither grants nor denies the right to execute an irrevocable assignment. All that it provides is that whatever assignment is executed shall not be irrevocable for longer than the periods stated.

By the quoted language Congress intended to regulate the assignment of membership dues only to the very limited extent of requiring that if the written assignment be irrevocable it be not irrevocable for longer than one year or the termination date of the collective agreement. This limited prohibition of the federal statute has no application to revocable assignments. Such an extremely limited entry into the field of assignments for membership dues certainly does not indicate any intent to pre-empt the field of check-offs for such dues. *Allen-Bradley Local No. 111* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154; *International Union* v. *Wisconsin Employment Relations Board et al.*, 336 U. S. 245, 69 S. Ct. 516, 93 L. Ed. 651; *Algoma Plywood and Veneer Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301, 69 S. Ct. 584, 93 L. Ed. 691; *Hill* v. *Florida*, 325 U. S. 538, 65 S. Ct. 1373, 89 L. Ed. 1782; *Bethlehem Steel Co. et al.* v. *N. Y. State Labor Relations Board*, 330 U. S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234; *LaCrosse Telephone Corp.* v. *Wisconsin Employment Relations Board et al.*, 336 U. S. 18, 69 S. Ct. 379, 93 L. Ed. 463; *International Union, etc.* v. *O'Brien*, 339 U. S. 454, 70 S. Ct. 781, 94 L. Ed. 978; *Plankington Packing Co.* v *Wisconsin Board*, 338 U. S. 953, 70 S. Ct. 491, 94 L. Ed. 588; *Amalgamated Ass'n of Street, Electric Railway and Motor Coach Employees, etc.* v. *Wisconsin Board*, and *United Gas, Coke and Chemical Workers, etc.* v. *Wisconsin Board, Nos. 329 and 438*, decided in one opinion on February 26, 1951, 340 U. S. 383, 71 S. Ct. 359, 95 L. Ed. 383.

As previously noted, a membership dues assignment under the Utah act must be honored by the employer "until otherwise directed by the employee." In other words, such

an assignment executed under the Utah act must always be revocable by the employee. It may not be irrevocable. We submit that the writer of the majority opinion of the Utah Supreme Court has erroneously interpreted the Utah statute as compelling employers to recognize assignments made irrevocable for periods longer than one year. At one point the opinion states: "The Utah statutes further conflict with Sec. 302 of the L. M. R. A. by compelling employers to recognize assignments which may be made irrevocable for a period longer than one year and which may be made for the payment of obligations other than 'membership dues' " (R. 26). As we read the Utah statute every assignment executed pursuant to its terms is binding on the employer only "until otherwise directed by the employee." Such an assignment could not properly be described as irrevocable for any period of time.

The Utah Supreme Court also erroneously concluded that the Federal statute affirmatively grants authority or permission to an employer to honor an assignment for membership dues under certain presreibed conditions. The opinion expressly states that the Federal statute gives an employer an *option* to "check-off" dues or to refuse to do so (R. 26). We contend that the Federal statute in reality confers no privilege, permission, or right. As previously stated, it neither grants nor denies the right to execute an irrevocable assignment. Its only intrusion into the field of assignments for membership dues is to specify that if such assignments are irrevocable they shall not be irrevocable for periods longer than one year or the termination dates of applicable collective agreements, whichever first occurs.

Under the Utah act all assignments for membership dues must be revocable, and inasmuch as the Federal statute neither grants nor denies the right to execute irrevocable assignments we submit that it has no applicability whatsoever in Utah. Because the Utah law requires that all such

assignments shall remain in effect "until otherwise directed by the employee," there cannot be executed in Utah a valid irrevocable assignment to which the Federal statute might be applied to limit the period of irrevocability. Under these circumstances there simply cannot be any conflict between the two acts. We submit that the conflict found by the Utah Supreme Court is based upon its misconstruction of the two acts in question.

In Utah, labor unions are relatively small, and union membership may be scattered over comparatively large areas. Under such circumstances there is greater need for providing that an employer must comply with the provisions of a wage assignment for membership dues than exists in areas where union membership is more concentrated. Local conditions, we submit, afford compelling reasons why the local law should be upheld. In the absence of conflict between the local and federal provisions relating to assignments for membership dues the local law should prevail. This Court has recently reaffirmed its position that "normally congressional purpose to displace local laws must be clearly manifested." *California* v. *Zook*, 336 U. S. 725, 69 S. Ct. 841, 93 L. Ed. 1005. The recent trend of the decisions of this Court emphasize the importance of the preservation of state law and state policy, especially in the field of labor relations. *Building Service Employees International Union et al.* v. *Gazzam*, 339 U. S. 532, 70 S. Ct. 784, 94 L. Ed. 1045; *International Brotherhood, etc.* v. *Hanke*, 339 U. S. 470, 70 S. Ct. 773, 94 L. Ed. 995; *Hughes* v. *Superior Court*, 339 U. S. 460, 70 S. Ct. 718, 94 L Ed. 985.

Conclusion

It is respectfully submitted that the judgment and opinion of the Supreme Court of Utah is not in accord with numerous expressions by this Court to the effect that identity of subject matter alone does not automatically invalidate a

local law, that Congressional purpose to displace the local law must be clearly manifested, and that if the acts may be reconciled and involve no conflict both should be permitted to stand.

We contend that the very limited restriction in the Federal statute as to the length of time irrevocable assignments may be effective does not indicate an intent to pre-empt the entire field so as to invalidate state statutes dealing with assignments for membership dues. The field has been left open by Congress for the enactment of state statutes dealing with situations of local importance and significance.

The Utah statute insofar as it relates to membership dues is in harmony with the federal statute, and the conditions under which it makes it mandatory for assignments for such dues to be observed and followed give rise to no conflict with the provisions of the Federal statute. The conflict found by the majority of the Utah Supreme Court rests upon erroneous interpretations of the federal and local statutes.

We submit that a Writ of Certiorari should be granted, and after review of the record the judgment of the Supreme Court of Utah should be reversed.

Respectfully submitted,

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MONTGOMERY WARD & CO., INCORPORATED,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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SUPREME COURT OF THE UNITED STATES

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Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

ARGUMENT.

A Writ of Certiorari Should Not Issue In This Case Because The Review Sought By Petitioner Is Essentially A Review Of A State Supreme Court's Construction Of A State Statute.

This case involves a statute of the State of Utah which requires an employer, when so directed in writing by an employee, "* * * to deduct a sum at the rate not exceeding three per cent per month, from his [the employee's] wages and to pay the same to a labor organization or union * * *," and makes wilful failure to do so a misdemeanor. Section 49-14-1 and 49-14-3, Utah Code Annotated 1943 (Pet. Br. p. 7).

The Supreme Court of Utah held that this state statute, "being repugnant to Section 302 of the Labor Management Relations Act [29 U.S.C. § 186] must yield to the latter and be held not applicable to employers and employees in any 'industry affecting commerce' as defined in the Labor Management Relations Act." (R. p. 26; .... Utah ...., 233 P. (2d) 685).

Sections 302 (a) and 302 (c)(4) of the Labor Management Relations Act in terms prohibit the payment of money to a union representative by an employer except:

a. Under written assignments "* * * which shall not be irrevocable for a period of more than one year, or beyond the termination of the applicable collective agreement, whichever occurs sooner;"

b. Where the money paid to the union is "* * * deducted from the wages of employees in payment of membership dues in a labor organization".

The Utah Supreme Court held that the Utah statute:

a. Compels employers "* * * to recognize assignments which may be made irrevocable for a period longer than one year * * * " (R. p. 26).

b. Compels employers "* * * to recognize assignments * * * which may be made for the payment of obligations other than 'membership dues.'" (R. p. 26).

A more direct conflict between two statutes is difficult to imagine. An employer subject to both acts would be given a Hobson's choice if served with a wage assignment of the character permitted by the Utah statute, as construed by the Utah court. To refuse to honor the assignment would be a violation of Utah penal law. To honor the assignment and make payments pursuant to it would be a violation of federal penal law. No juri-

dical interpretation of the federal act is necessary to reach this conclusion. The Utah statute, as construed by the Utah court, is fatally irreconcilable with the bare language of the federal statute. Clearly, the two acts cannot "* * * move freely within the orbit of their respective purposes without infringing upon one another." *Union Brokerage Co.* v. *Jensen*, 322 U.S. 202, 207, 64 S.Ct. 967, 88 L.Ed. 1227, 152 A.L.R. 1072.

The Petitioner, although attempting to frame its petition in language calling for a review of the state court's construction of the federal statute, could not avoid acknowledgment that the gist of its complaint here is its contention that the Utah court erroneously construed the state statute. Thus Petitioner argues that:

1. "* * * the writer of the majority opinion of the Utah Supreme Court has erroneously interpreted the Utah statute * * *" (Pet. Br. p. 12).
2. "* * * an assignment executed under the Utah Act must always be revocable by the employee. It may not be irrevocable." (Pet. Br. p. 12), that "Under the Utah Act all assignments * * * must be revocable * * *" (Pet. Br. p. 12), and that "* * * there cannot be executed in Utah a valid irrevocable assignment * * *" (Pet. Br. p. 13), although the Utah Supreme Court expressly held that the Utah statute compels employers "* * * to recognize assignments which may be made irrevocable for a period longer than one year * * *" (R. p. 26; Pet. Br. p. 12).
3. "The conflict found by the majority of the Utah Supreme Court rests upon erroneous interpretation of the federal *and local* statutes." (Pet. Br. p. 14, emphasis added).

The state court has construed the Utah statute in a way which makes unavoidable a finding of repugnancy between

the state and federal statutes. It is no answer to this decision to say, as has Petitioner, that "As we read the Utah statute * * *" it is not inconsistent with the federal act (Pet. Br. p. 12). This court has uniformly held itself bound by the construction placed upon a state statute by the highest court of the state. *United States* v. *State of Texas,* 314 U.S. 480, 62 S. Ct. 350, 86 L.Ed. 356; *Sage Stores Co.* v. *State of Kansas,* 323 U.S. 32, 65 S.Ct. 9, 89 L.Ed. 25; *Allen-Bradley Local* 232 v. *Wisconsin Employment Relations Board,* 315 U.S. 740, 62 S.Ct. 820, 86 L.Ed. 1154; *Kenney* v. *Supreme Lodge of The World, Loyal Order of Moose,* 252 U.S. 411, 40 S.Ct. 371, 64 L.Ed. 638, 10 A.L.R. 716. This is so even though the construction found by the state court requires invalidation of the state statute. *Bingaman* v. *Golden Eagle Western Lines,* 297 U.S. 626, 56 S.Ct. 624, 80 L. Ed. 928. The correctness or incorrectness of such construction is not a matter for review by this Court. *Enterprise Irrigation District* v. *Farmer's Mutual Casualty Co.,* 243 U.S. 157, 37 S.Ct. 318, 61 L.Ed. 644.

CONCLUSION.

This case falls squarely within the rule that this Court will not review the correctness of a state court's interpretation of a state statute. Once the Utah statute had been construed by the state court as compelling recognition of assignments made irrevocable for a period longer than one year and made for the payment of obligations other than membership dues, it was hardly more than a ministerial act to compare it with the language of the federal statute and disclose a glaring and irreconcilable conflict.

The decision of the Utah Supreme Court does not depend upon a construction of a federal statute and presents no substantial federal question. The gist of the decision is that the Utah statute, as construed by the Supreme Court of the State, conflicts directly with unambiguous provisions of the Labor Management Relations Act, and that since the federal law is supreme the state law must be inapplicable to interstate employers. To reverse this determination would require an interpretation of *state* law contrary to that of the highest court of the state.

We therefore respectfully submit that Petitioner's request for a writ of certiorari to the Utah Supreme Court should be denied.

Respectfully submitted,

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